LETTER TO...THE LORD HIGH CHANCELLOR CRANWORTH...

A LETTER

TO

THE RIGHT HONORABLE THE

:D HIGH CHANCELLOR CRANWORTH

ON THE

BILLS LATELY INTRODUCED BY LORD BROUGHAM,

AND NOW BEFORE PARLIAMENT;

FOR THE

FURTHER EXTENSION

OF THE

JURISDICTION OF THE COUNTY COURTS.

BY

A LAW REFORMER.

LONDON:
JAMES RIDGWAY, 169, PICCADILLY.
1853.

A LETTER,

ETC.

My Lord,

I offer no apology to your Lordship for addressing you on so all-important a subject as that of the further extension of the jurisdiction of the County Courts, neither can I promise that my letter will be a very brief one. I shall endeavour, however, to make it as short as possible.

On Tuesday, the 15th of November last, the day on which your Lordship's predecessor, (Lord St. Leonards), made his explanatory statement of the operation of the Law Reforms of last Session, and of the measures which it was his intention shortly to introduce, my Lord Brougham presented to the House of Lords three Bills which were severally read a first time and ordered to be printed.

1. "A Bill intituled an Act for extending the Jurisdiction of the County Courts to certain matters cognizable in the Court of Chancery."
2. "A Bill intituled an Act to extend the Jurisdiction of the Judges of the County Courts, and to facilitate proceedings in the High Court of Chancery." And,

3. "A Bill intituled an Act to limit the Jurisdiction of Her Majesty's Court of Bankruptcy, to abolish the Courts of Bankruptcy for the Country Districts, and to give to the Judges of the County Courts jurisdiction in matters of Bankruptcy in certain cases."

These, my Lord, are beyond doubt very important measures—important to the whole community at large, but more particularly so to the mercantile and trading portions of it. The Bills have evidently undergone considerable alteration since last Session, and appear now to be better calculated to effect the objects which his Lordship has in view. They are clear and concise and well worthy of a perusal, and after bestowing considerable attention upon them, and upon the subjects to which they relate, I am firmly persuaded that they contain propositions which will meet with a very great amount of support, and that they will be hailed by the country as highly useful and practical reforms. It is for the purpose of placing their expediency in a prominent point of view, that I now take the liberty of addressing your Lordship.

The first or "County Courts Equitable Jurisdiction Bill," as it is called, is a Bill to give to the County Courts original Jurisdiction in respect of matters which heretofore have only been cognizable in the Court of Chancery, and enacts that—

"It shall and may be lawful to and for any person seeking equitable relief to enter a claim against any

person from whom such relief is sought, either with the clerk of the County Court for the district within which such last-mentioned person resides, or in any other of such Courts, by leave of the Judge of such Court, in any of the following cases; (that is to say,) in any case, where the party so seeking relief is or claims to be,

1. "A creditor upon the estate of any deceased person, such creditor seeking payment of his debt out of the deceased's personal assets:
2. "A legatee under the will of any deceased person, such legatee seeking payment or delivery of his legacy out of such deceased person's personal assets:
3. "A residuary legatee, or one of the residuary legatees, of any deceased person, seeking an account of the residue, and payment or appropriation of his share therein:
4. "The person or any of the persons entitled to the personal estate of any person who may have died intestate, and seeking an account of such personal estate, and payment of his share thereof:
5. "An executor or administrator of any deceased person, seeking to have the personal estate of such deceased person administered, under the directions of the Judge of the Court for the district within which he resides:
6. "A person entitled to an account of the dealings and transactions of a partnership dissolved or expired, seeking such account:
7. "A person entitled to an equitable estate or interest, and seeking to use the name of his trustee in prosecuting a suit for his own sole benefit:
8. "A person entitled to have a new trustee appointed, in a case where there is no power in the instrument creating the trusts to appoint new trustees, or where

the power cannot be exercised, and seeking to appoint a new trustee."

The second or "County Courts further extension Bill," gives power to the Lord Chancellor to appoint the Judges of the County Courts to be officers of and assistant to the Court of Chancery, and to make general orders and regulations for the following purposes, viz.

1. "For enabling the Court of Chancery in any cause or matter, when it shall appear that any accounts or inquiries that may require to be taken or made in any such cause or matter may be conveniently taken or made by a Judge of the County Court or a Master Extraordinary in Ireland of the English Court of Chancery, to direct that such inquiries or accounts, or any portion thereof, shall be taken or made by one of the said Judges or Masters Extraordinary, and to give such directions as to the time and mode of taking the same, and otherwise relating thereto, as shall be deemed expedient:
2. "For making provision for taking down the evidence and examinations to be taken under the authority of this Act, and for providing for the filing, depositing and preservation of the examinations, depositions, affidavits, proceedings, and reports under any such reference, and the means of access to and obtaining copies of the same:
3. "For authorizing the Judges of the County Court and the Masters Extraordinary in Ireland aforesaid to exercise all powers of administering oaths, taking affidavits, and receiving affirmations, declarations, acknowledgments and attestations of honour, which are exercised by the Clerk of Reports; and for au-

thorizing the said Judges and Masters Extraordinary to take pleas, answers, disclaimers, and examinations in causes and matters pending in the said Court of Chancery, and also the examination of any married woman with reference to her consent to the disposal of any funds or monies subject to the order of the said Court, without any commission or other authority than this Act:

4. "For enabling the said Judges and Masters Extraordinary, without any commission or other authority, to examine witnesses brought before them in causes and matters depending in the said Court of Chancery, and for enabling any party in any such cause or matter to have his witnesses examined before any such Judge or Master Extraordinary, and for regulating the mode of such examination;
5. "For providing for the authentication and transmission by post or otherwise of any such pleas, answers, disclaimers, examinations, depositions, proceedings, and reports, and of other documents relating to the matters done by or before any such Judge or Master Extraordinary."

And the third, or "District Courts of Bankruptcy Abolition Bill," restricts the jurisdiction of the London Court of Bankruptcy to a circle of twenty miles from the General Post Office—abolishes the District Courts of Bankruptcy—and gives jurisdiction in Bankruptcy to the Judges of the County Courts, in all cases where the trader resides beyond twenty miles of London. The first section of this Bill is as follows:—

"From and after the commencement of this Act the jurisdiction of her Majesty's Court of Bankruptcy and the Commissioners thereof shall, save and except as herein-

after mentioned, be restricted to cases in which the petitioner in any matter of arrangement, or the trader in any matter of Bankruptcy, or the trader debtor in any matter of trader debtor summons, shall have resided or carried on business for six months next immediately preceding the time of the filing of the petition for arrangement or petition for adjudication of Bankruptcy, or of the issuing of any summons against any trader debtor, within any parish, the distance whereof, as measured by the nearest highway from the General Post Office in London, to the parish church of such parish, shall not exceed the distance of twenty miles; the Courts of Bankruptcy for the several districts in the country, viz., for the districts of Birmingham, Bristol, Exeter, Leeds, Liverpool, Manchester, and Newcastle, shall be abolished; and the Judges and Deputy Judges of the Courts established or to be hereafter established under the aforesaid Act, and the additional Judges to be appointed under this Act, shall have and exercise the same jurisdiction, power, and authority as is given to the Court of Bankruptcy or the Commissioners thereof by the Act of the Seventh and Eighth Victoria, Chapter Seventy, and by "The Bankrupt Law Consolidation Act, 1849," and by the rules and orders made in pursuance of such Acts, in all cases wherein the petitioner, or trader, or trader debtor, shall have resided elsewhere than as hereinbefore mentioned, and shall have resided or carried on business for six months next immediately preceding the time of the filing of the petition for arrangement or for adjudication of Bankruptcy, or the issuing of any summons against any trader debtor, within the district of any County Court to which any petition for arrangement or for adjudication of Bankruptcy shall be preferred, or to which any creditor may apply for any summons against any trader debtor; and such Judges and Deputy Judges shall each singly be and form a Court for every purpose under this and the two last-mentioned Acts; and all

decisions and orders made by them under this Act shall be subject to the like appeal as the decisions and orders of the Commissioners of the Court of Bankruptcy."

If, happily, these Bills should become law, the whole community will have the opportunity afforded them of settling almost all their disputes and differences at their own homes. In the Bill conferring Original Jurisdiction in Equity, a right of appeal is given to the Court of Chancery; and in the Bill transferring the Bankruptcy Jurisdiction, an appeal lies to the Lords Justices—and had my Lord Brougham gone a little farther and proposed a still greater extension of the jurisdiction of the County Courts—its extension to all matters of debt, without any restriction whatever as to amount, I should not have been at all surprised, if (with those safeguards of appeal), his Lordship had found Parliament—and more particularly the House of Commons—perfectly ready to go along with him.

Lord St. Leonards, however, appears to be hostile to these Bills of my Lord Brougham's—hostile certainly to the first, and to the third of them—to giving Original Jurisdiction in Equity to the Judges of the County Courts—and to the transfer to them of the Bankruptcy Jurisdiction—and as regards the second Bill—the Bill giving power to the Lord Chancellor to appoint the Judges of the County Courts to be Officers of the Court of Chancery, —his Lordship, while he admits that certain powers might properly be given in aid of the Court

of Chancery, proposes, in the speech to which I have adverted, to give those powers, not to the County Court Judges, but to the Commissioners of the Court of Bankruptcy, because, as his Lordship stated, the Commissioners, from the nature of their jurisdiction, would, in his opinion, "be likely to perform those duties with more satisfaction to the Court of Chancery."* Lord St. Leonards objects to giving even these powers, trifling and comparatively unimportant as they are, to the Judges of the County Courts; and thence it is of course to be inferred, that his Lordship will still more strongly object to any proposal for giving them Original Jurisdiction in Equity. Lord Brougham proposes to reduce the London Court of Bankruptcy to a Chief Commissioner, and two other Commissioners,—to confine their jurisdiction entirely to matters of Bankruptcy,—to abolish the Seven District Courts of Bankruptcy,—and to give Jurisdiction in Bankruptcy and Original and other Jurisdiction in Equity to the County Courts, while Lord St. Leonards proposes to retain the Bankruptcy Courts in London and in the country, to make the Commissioners Officers of the Court of Chancery, and to give them Jurisdiction under certain Clauses, which appeared in Lord Brougham's Bankrupt Law Consolidation Bill of 1849, and which at the time acquired the name of the "Dead Men's Clauses."

* See Hansard, vol. 123, p. 189.

I have not the honour of knowing what your Lordship's sentiments are in relation to the Bills to which I am directing your attention; but I would fain hope, that when you come to look carefully into them, and to weigh and consider the arguments in their favour, you will feel satisfied that they ought no longer to be delayed;—that no measure, such as that sketched out by Lord St. Leonards,—no measure which does not enable a suitor to *commence* a Chancery suit in the County Courts, will ever be received by the public as anything but an instalment,—that the merely empowering the Lord Chancellor to appoint the Commissioners of the Bankruptcy Courts to act "in aid" of the Court of Chancery, will not reach the evils complained of, or be looked upon as at all approaching to either the kind or degree of Chancery Reform that is required;—and that, although such a measure might in some instances mitigate, it would never exterminate the intolerable grievances of the present Chancery system. My Lord Brougham's plan is certainly a bold one; but it also appears to me to be both simple and right;—it is a bold plan, because it rids us at one swoop, of almost all the grievances so long and so loudly complained of;—it is simple, inasmuch as the meanest capacity may comprehend it;—and it is right, for this reason, that so long as it affords due means of appeal, it must save the suitor much needless cost, and it cannot occasion any failure of justice.

I could give your Lordship numerous instances,—instances *ad nauseam*,—of extreme hardship arising out of the present order of things,—instances of delay, of uncertainty, and of ruinous expense,—and instances, also, of the dread and horror of these combined, operating to prevent injured parties from seeking their just rights,—of their being advised by eminent counsel to abandon those rights, and of their preferring to do so, and quietly submitting to injustice rather than incur the infliction and the misery of a suit in Chancery. I will, however, content myself with referring to only a very few cases, simply because these appear to me sufficiently to elucidate all this, and to point prominently to the kind of remedy that is required; and I shall begin with one or two mentioned by Lord Brougham, in a speech made by his Lordship on the 14th of July, 1851, on the first reading of the Court of Chancery and Judicial Committee Bill of that year. On that occasion Lord Brougham is thus reported:—

"When he said that the present measure was a step in the right direction, he must add that it was not a very long step—it was not at all a stride: but if any man thought that this, or any other structural alteration in the Court of Chancery—if any man dreamed that such a measure laid the axe to the root of the greatest and most grievous of the many crying evils that afflicted the subjects of this country, as regarded the administration of justice, not the Judges or the practitioners, but the unhappy suitors of the Court, although he admitted that it would,

nevertheless, do justice to the suitor, and enable him to obtain that which he had a right to obtain at a reasonable cost of money, of trouble, and of time—if any dreamer, he repeated, believed that any structural alteration of the Court of Chancery would do all that was wanted, such dreamer was in a fool's paradise, and would awaken to a sad reality that would belie all he had fancied in his slumbers. Why, it would alarm their Lordships to hear some of the proofs which the Committee over which he presided had lately been receiving, of the state of things in all the Courts of Equity, and in all the branches of these Courts. Their Lordships had victims among themselves; and he saw a noble friend of his then present on the cross benches, who went into Chancery to recover a sum of 500*l.*, and who had the misfortune to deal with an insolvent party and his professional adviser. There being fraud connected with the case, he had to go into Chancery, and 1,200*l.* for costs were expended in obtaining that 500*l.*! The noble Lord succeeded, and perhaps on tolerably cheap terms, considering what the Court of Chancery was—certainly he had heard of cases where the rate of charge was far higher. But the noble Lord would have been better off by 700*l.*, had he put up with the loss of the 500*l.* and declared that he would not, in order to recover it from the fraud-monger, resort to the law-monger, who had thus turned out far the worse of the two, taking 700*l.* when the other had been content with five. In another case, 38,000*l.* had to be distributed—merely distributed. There was not a single debt, and there was no dispute; and nineteen out of twenty of the claimants would have been alarmed at the very idea of going into Chancery. It was requisite to take an account; and they said, "Let it be taken by a common accountant, and on no account go into Chancery." But, unhappily, one of the number became bankrupt, and his assignees insisted upon carrying

the case into Chancery. It lasted eleven years, from 1840 till 1851, and the costs were 2,827*l.*! The system was not confined to great cases—it was equally oppressive in the smallest. An infant was entitled to an income of 155*l.* a year. Four years were consumed in Chancery without any opposition or contest, simply in the infant obtaining the income which was his own; and in getting paid out to him those four years' income, 68*l.* a year, on an average, was expended in the costs of "common orders, and motions of course." Thus altogether, 270*l.* had been expended in costs in a case in which there was no contest, in order to get 620*l.* In another case, 1,000*l.* were claimed. It went into Chancery in 1835. In 1840, after it had been there five years, a respectable solicitor found it in the Rolls, "set down to be heard," in some way, at some stage or other, It had actually, in five years, by the "forcing process" of the Court of Chancery, ripened so prematurely, that it was "set down for a hearing," in 1841; and the solicitor gave evidence of the case in that year, before the Committee of Lord Cottenham. Well, their Lordships would scarcely credit it, that same solicitor was, last Tuesday, examined before the Committee, over which he (Lord Brougham) had the honour to preside, about that same suit; and stated that it was "in the Rolls;" just set down again for a hearing—another hearing of some other sort! And it would take at least five years more before it was "ripe" for final settlement. Why, just conceive the claimant to have been a young man wanting the money to start in life—unable to obtain it—obliged to start without it; suppose for India. In 1840, let it be supposed, the man starts for India, having learnt that the cause, after five years, has just been "set down for hearing in the Rolls." Eleven or twelve years elapse, the man comes home, after much service, and having escaped the risks of sea, and of climate, and of war,

and inquires about his 1,000*l.* and the cause. "Oh, it is just set down for hearing in the Rolls!" "In the Rolls!" he might exclaim; "why, I left it there twelve years ago." "Well, at all events, I hope it is ripe for final decision now?" "Not at all; it will take at least five years further to settle it!" "Oh, I may as well go back to India again!" might the poor claimant exclaim. And nearly 2,000*l.* had already been expended in recovering that 1,000*l.*—about 200 per cent. Why, well might the man exclaim, "Let me go back to India!" They have cobra de capello there, they have boa constrictors, they have tigers and jungle fevers, and all sorts of horrid chances, but, at all events, they have not this dreadful place, which, as he dared not name, should be nameless." (*See* Hansard, 1851, vol. 118, page 643.)

Mr. Johnes, the Judge of the North Wales and Aberystwyth County Courts, in a letter addressed by him to Lord Brougham,* after pointing out that under section 22 of the 9th and 10th Vict., chap. 95, the Judges of the Court of Chancery have already the power of referring Interlocutory and Administrative business to the County Courts, proceeds to say:—

"But a transfer of the mere administrative functions of Chancery, to the County Courts, is obviously inadequate to redress, or even to mitigate, the most palpable defects and the most oppressive grievances of the Chancery system. For the attainment of those important ends, the establishment in the County Courts of an extensive original

* "Popular Remarks on the Reform of the Court of Chancery, by the Union in the County Courts of the Chancery and Common Law Jurisdictions, with Suggestions on the Bill for giving to those Courts a Bankruptcy jurisdiction, in a Letter to Lord Brougham and Vaux, by Arthur James Johnes, Esq., Judge of the North Wales and Aberystwyth County Courts."—Carnarvon: Rees, 1851.

Chancery Jurisdiction is absolutely indispensable. For example, to take the common case of a mortgage for 100*l.*, in which the mortgagee having been for some time in possession, the mortgagor (reasonably believing the debt and interest to have been re-paid), desires to redeem the estate and to compel the mortgagee to render an account. According to the existing system of Chancery, even as modified by the improvement proposed in your Lordship's Bill,* the case must travel through the following stages. The filing of a bill (or claim) in Chancery, the hearing of the cause, order of reference to the Judge of the County Courts, inquiry into the state of accounts before the Judge or Clerk of the County Courts, Report thereon, hearing on further directions in the Court of Chancery, and the final decree. No prudent man would incur the expense and risk involved in these various stages, for the sake of a moderate sum of money. Yet most cases of mortgage may be disposed of in the County Courts, more easily than many of the Trade Accounts that commonly occupy so large a portion of the time of those tribunals. Those Courts have already jurisdiction over several branches of Equity—such as distributive shares and partnership accounts. Various opinions have prevailed as to the amount which would make it worth while to sue in Chancery. Some witnesses have named 500*l.*; none have suggested less than several hundreds. I shall not presume to suggest the limit (as regards amount) at which the Chancery functions of the County Courts ought to be fixed, because I do not think that it is in cases of moderate amount only that the costs of the Superior Courts (more especially of the Court of Chancery) are destructive of the ends of justice. The circumstance that the Legislature has confined the Common Law jurisdiction of the County Courts to cases under fifty pounds, is calculated to create an impression

* The Bill for giving original Equity Jurisdiction to the County Courts was not then before Parliament.

that in cases above that amount the costs of proceeding in the Superior Courts do not exceed an outlay commensurate with the value of the subject matter of the suit. But I need hardly observe that in few contested cases in those Courts can the combined costs of both parties fall below a hundred pounds, and that those costs may amount to several hundreds, or more, according to the nature of the evidence, and other contingencies—quite independent of the value of the property sought to be recovered, which in reality has no influence on the amount of costs. It is not the amount to be recovered—but the means of the suitor—that must determine his choice as regards abandoning his just rights on the one hand, or on the other instituting a suit in a Court in which such serious risks must be incurred. It must be borne in mind that owing to difficulties of evidence—and other contingencies of litigation—there are probably not many cases, however just, which are altogether free from the hazard of failure in a Court of Law. On these grounds the Superior Courts are practically inaccessible, in cases of large, as well as in those of moderate, amount to all, except to individuals to whom money is no object. No prudent man, of the middle class of society, can risk the income by which his family must be maintained on the uncertain issue of a suit, however valuable may be the stake involved. For these reasons the existence, even in cases under fifty pounds, of a concurrent jurisdiction in the Superior Courts, can rarely be conducive to any other purpose than that of oppression or intimidation by enabling a man of wealth, or an attorney of an inferior grade, to sue in an expensive Court an individual of moderate resources, or a timid person unaccustomed to litigation. The necessity of a cheap and accessible jurisdiction is not more obvious in the instances previously alluded to than it is in the following, which (among other branches of Equity) are as yet excluded from the control of the County Courts. Suits for the redemption or fore-

closure of mortgages,—for enforcing the specific performance of a contract for the purchase or sale of land, for the fulfilment of trusts and the administration of the estates of deceased persons. In Chancery cases the aggrieved parties are frequently more helpless than in cases at common law, and have even a stronger claim to legal protection. For example, a shopkeeper who trusts a doubtful customer commonly does so with his eyes open. But those who suffer by breaches of trust are generally victims of frauds perpetrated by means of the facilities their own ignorance or infancy may have afforded to individuals—selected and pledged by past generations—to act as their especial friends and protectors. In such instances the benefits of a simple and accessible tribunal (like the County Courts) having the power of examining the parties, and other advantages in its process and procedure, is calculated to redress and avert an amount of wrong (now silently endured) of which it is scarcely possible to convey an adequate conception.

In cases such as I have last adverted to, I consider the absence, as regards the County Courts, of an original Equity jurisdiction to be especially injurious to the community for the following reasons. Among the advantages conferred by those Courts I have found from experience that the diminution of expenses (in comparison with those of the Superior Courts) weigh with the suitors perhaps even less in their favour, than the simple, intelligible, and accessible character of the system. They can enter their own plaints with the County Clerk, state their own cases to the Judge, and receive his decisions from his own lips. If they are (or fancy themselves) aggrieved by an opponent, or by a mistake of an officer of the Court, they can apply to the Judge with the certainty of obtaining protection from injustice or irregularity. They have the choice of pleading their own cases or of employing a professional advocate. If they adopt the latter course, as his functions and power cease with the Court, they do not dread the

risk of charges disproportionate to the services rendered. Now under the existing Chancery system, the suitor is entirely deprived of those sources of security and satisfaction which local tribunals are so eminently calculated to confer. So soon as a cause is commenced, he feels himself completely at the mercy of his professional advisers in London, (the agents of his solicitor in the country) every stage of the suit (conducted as it is in the distant metropolis), forms a riddle and a mystery, alike beyond his comprehension and control. He has no opportunity of watching the progress of the cause with his own eyes, or of effectually exercising his own discretion from time to time, as regards the expediency of proceeding with or compromising the cause, and he is exposed to charges (possibly unjust or extravagant) on which he possesses no check except the right of taxation, a remedy, generally speaking, much worse than the disease. I have known numerous expensive Chancery suits, (and such instances must be familiar to all members of the legal profession) in which the disputes would have been settled in an hour to the satisfaction of both the plaintiff and the defendant, had the parties been examined on oath, face to face in the County Courts."

Mr. Tyrrel, the Judge of the County Court of East Devon and Recorder of Tiverton, in a letter to Lord Campbell,* having raised the question as to whether any improvements, however great, of the Superior Courts, can satisfy the wants and reasonable expectations of the public, if unaccompanied by an

* "Letter to the Right Honourable Lord Campbell on County Court Extension, by John Tyrrell, Esq., Judge of the County Court of East Devon, Recorder of Tiverton, &c. &c."—London: Stevens and Norton.

extensive addition to the jurisdiction of the County Courts, says—

"I need scarcely remind your Lordship that the great grievances in the administration of the law, of which the public has so long and so justly complained, are its *proverbial delay*, its '*glorious uncertainty*,' and its *ruinous expense*; and the question I would submit to your Lordship's consideration is, whether any one of these evils, or at all events whether by far the greatest of these evils can be effectually removed, but by permitting all causes, both at law and in equity, or at least such of them as cannot *well* bear the expense of the Superior Courts, to be tried in the immediate neighbourhood of where the cause of action arises, and of where the parties, their attornies and their witnesses reside."

The Learned Judge then gives the cause list of the County Court held at Exeter during the summer assize week in 1851. The County Court judge's cause list at that court only, and there are five courts in a month, contains seventy-one causes. Lord Campbell presided at the Assizes, and had *six* causes to try. The author says that causes are daily increasing, though in his circuit just finished he had upwards of 600, or more than 7000 causes a year. And by way of illustrating his proposition, that all causes should at all events have their commencement in the County Courts, and that the want of further extension of their jurisdiction inflicts upon parties enormous expense in exceedingly trifling causes, he states the following cases as having actually occurred within his knowledge.

(1). "A farmer near Torrington sued his neighbour for a trespass committed in the assertion of a right upon a piece of waste ground, and the parties agreed to try the title in the County Court. The defendant succeeded, and the actual costs incurred by the plaintiff in this important cause did not exceed ten pounds. I call the cause *important*, because a similar case from the same neighbourhood was lately tried at the Exeter assizes, and there assumed very considerable importance. There too a farmer dug some stones upon a waste in the assertion of a right. The defendant appeared upon the trial beyond all doubt to be entitled to the waste, but the *pleadings were improperly drawn*, and the defendant failed from the ignorance or neglect of his special pleader. Now, my Lord, of the three grievances I have mentioned, the defendant here cannot complain of delay, for come injustice when it will, it comes too soon; but of uncertainty his complaint is serious and well founded. With right upon his side, he is for ever debarred from his right, because his attorney's agent in London happened to employ an ignorant or careless special pleader. Delay or uncertainty however sink in this case into insignificance compared with the expense. Upon a question which might have been decided in the County Court at a comparatively trifling expense, the defendant has had to pay in taxed costs, I have the bills before me, FOUR HUNDRED AND TEN POUNDS."

(2). "A tenant, whose lease had expired, refused to give up a *portion* of the land let to him, *claiming a right to it.* The *title* being in question, the County Court had no jurisdiction. The landlord brought an ejectment. From an error in the direction of the presiding Judge, the cause came *twice* to Exeter for trial. The landlord recovered this valuable, I should say *costly* piece of land, let since at one pound per annum, but at an enormous expense, for the defendant was a pauper, and the plaintiff has had to pay his own costs, amounting to 389*l.* 12*s.* 8*d.* Ten

pounds would have gone very far in paying the costs of both parties, had the cause been tried in the County Court."

(3), "A carpenter brought an action for 163*l.* 6*s.* The defendant paid 131*l.* into Court. The plaintiff proceeded for the remaining 32*l.* 6*s.* The cause was called on in its order at the assizes, and was *of course* referred to a barrister. The arbitrator awarded two or three pounds more than had been paid into court, which inflicted upon the defendant the payment of the whole costs, amounting to 209*l.* 8*s.*"

The author then gives an analysis of the costs of the three preceding cases. In the second, only the plaintiff's costs are given.

	Case 1.			Case 2.			Case 3.		
Process, pleading	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
and court fees...	71	12	0	88	2	5	70	18	10
Fees paid to counsel	43	3	0	54	0	0	34	19	0
Getting up evidence, briefs, &c.....	114	16	0	152	9	3	39	14	5
Attornies and witnesses at the trial	180	9	3	85	12	0	63	15	9
Fees to special jury	....			9	9	0	....		
	£410	0	3	£389	12	8	£209	8	0

And he adds, and truly, that a very great portion of the above expense is inherent in the trial taking place at a distance from where the cause of action arises, and that it is only the first item in the above analysis, in the present state of things, that admits of much curtailment; that so long as attornies and witnesses have to travel a long distance, and to remain away from their homes and business for

days, and to live at the most expensive rate at the most expensive time, the payments made to them are an expense which is inevitable.

Mr. Philip Hubersty, a Solicitor at Wirksworth, examined before the Chancery Commission in July last, as to the practicability of working Chancery references before the County Courts, says,

"I have been the clerk of six County Courts in the county of Derby. At the time the Bill was first passed, the Judge appointed me to all the County Courts which were then vacant, and consequently I devoted a great deal of my time and attention to the working of those Courts, and I think I am in a position to give every information as to the working of them. So far as my own experience goes I think there would be no difficulty in making those Courts very available to supply the great want that is now required with reference to the Masters' Offices. A few months ago we had a case at Ashbourn that was really a Creditor's suit, which was settled entirely in the County Court in this way. A man died leaving both real and personal estate considerably involved, and the Executors, in the opinions of some of the Creditors, were not administering the estate in the manner which they thought advantageous to their interests. The consequence was that they filed a usual Creditor's Bill. A short time afterwards another creditor sued the Executors in the County Courts. They appeared and stated to the judge that already the estate was being wound up in the Court of Chancery; but they said that they did not wish to incur the expense of all that inquiry, and were willing to leave the whole matter to the Judge if the other parties were also willing, and if his Honour would take it. The Judge consented to take the matter, and it was adjourned until the next Court. On the next Court the Bill and the Answer and all the

accounts were produced. The Plaintiff's attorney and the Plaintiff in the original suit were there, the Defendant's attorney and the Defendants were there, and the Plaintiff in the cause in the County Court was present. The Judge went through the accounts and checked them off. In the first instance he ascertained from the Bill and Answer the amount of assets that had come into their hands, and on the other hand he took the vouchers of their payments. The Plaintiff in the original suit in the Court of Chancery objected that there were parts of the estate that had not been duly accounted for; particularly some part of the produce of the real estate which had been sold and was not properly accounted for, and also some of the farming stock. A note was made of these matters, and they were referred to the Judge. He heard both sides, and ultimately decided upon the points which were reserved for his consideration. There were several, and they were taken and argued before him and were disposed of. The whole question and the whole accounts to the amount of 7000*l.* or 8000*l.* were settled at two sittings of the Court, and the Chancery suit was abandoned inasmuch as the whole accounts were wound up. There was found to be some money in the hands of the executors, and that money was appropriated in payment of the debts, and all parties were perfectly satisfied with the result." (*See First Report of Chancery Commission*, 1852, *p.* 160.)

I pause, my Lord, to look about me for some answer to all this, and I can find none. I can see no way of refuting, or of getting away from the force of these cases. I see no possibility of withstanding them. But it really would appear (and I grieve to say it) that we are utterly incapable of maturing or of making up our minds to any great or comprehensive scheme of law reform as regards any one subject, and that we must needs accomplish everything piece-

meal, and bit by bit. This is so notorious that it would be a sheer waste of time to dwell upon, or to give instances of it. I cannot refrain, however, from tracing the course, the ridiculously absurd course, I will venture to call it, which has been pursued in the erection of these very County Courts. Lord Brougham (then Henry Brougham) introduced his first County Courts Bill in the House of Commons in 1830—he laid it before the House of Lords in 1832—and again in 1833, when it was lost by a majority of one— and that Bill, be it remembered, contained clauses, under which fiats in Bankruptcy were to have been prosecuted in the County Courts, and Equity matters referred to them by the Lord Chancellor. The Bill, however, was lost, and nothing more was done for upwards of a dozen years. Nothing was done till 1846, when at length the first County Courts Act was passed, and since that time, scarce a session has elapsed without an Act to amend, or to alter, or to add something to the measure; and at this moment the Statute Book contains not fewer than four separate Acts on the same subject. These things, my Lord, are really disgraceful to us as a nation—and this a mode of proceeding which I shall surely be excused for denouncing as contemptible.

If, however, we cannot make up our minds to the scheme now propounded by Lord Brougham, let us at least make a beginning; let us limit the original jurisdiction in Equity to be given to the County Courts. Limit it, if your Lordship thinks fit, in the first instance, to matters where the

amount in dispute does not exceed £500 or even £300, but do, my Lord, lend your powerful assistance to put an end to these abominations which have truly become a reproach to our jurisprudence—let us have the means of ascertaining whether the people will not avail themselves of this cheap and expeditious mode of settling their disputes as regard Equity Matters to the same extent as they have done with respect to others—and above all things let there be a clause similar to section 17* of the 13 and 14 Vict. Chap. 61, and whereby litigants may agree among themselves to give the Judge jurisdiction to try any matter in dispute between them, even should the amount exceed the limit that may be determined on.

There is one point in which I submit that Lord Brougham's Bills are defective—one matter to which I think his Lordship has not given sufficient attention.

We all know what amount of additional work the transfer of Bankruptcy will cast upon the County Court Judges, and we also know, or at least we can form some sort of guess at that which will arise under references from the Court of Chancery. But the original jurisdiction in Equity proposed to be given (even if limited to £500 or to £300) opens so very wide a field, that it is quite impossible to arrive at

* This section, though admirable in itself, has become almost a dead letter, in consquence of the absurdly high scale of fees to which litigants are exposed when the matter in dispute exceeds £50. These fees must be altered.

any approximation to the extent of business which it may produce; that it must be very great is I think manifest, and indeed my own notion is that this original jurisdiction will do for the Court of Chancery what it is tolerably clear these County Courts, with an unlimited jurisdiction in debt, would very soon accomplish for Westminster Hall, viz: render them Courts of Appeal—and Courts of Appeal only. And viewing it in this light, I am of opinion that Lord Brougham has not sufficiently provided, or anything like sufficiently provided for the increase of business that is sure to take place—that the additional force, he proposes, will never enable the County Courts to dispose of it—and that his Lordship ought to have enacted that for each of the County Court Districts, there should at once be an additional Judge appointed, and then under the Rules and Orders to be made in pursuance of the Act provision might be made for one of the Judges being at all times accessible—being at all times to be found at the largest or most central or most convenient town in each district. This I look upon as a matter of the very greatest importance for reasons which must be obvious to every one, and indeed I feel certain that with any lesser number than I have suggested very great inconvenience and confusion must arise. The principal or head office ought to be at the most convenient town in the district (always preferring County Towns where practicable) and *there* one of the Judges ought

every day to be found, the other Judge, his colleague, being on circuit; and in this way some arrangement might also be practicable for giving to the Judges some vacation. This would in many ways be attended with great convenience both as regards original and other Equity jurisdiction, and also as regards Bankruptcy, and Criminal jurisdiction might then, as in Scotland, be given to them. I am aware, my Lord, that what I am now suggesting, looks extremely formidable when reduced to figures. I know that eventually it would amount to an additional cost of between eighty and ninety thousand pounds a year, even if the salaries should not be increased—but judging from experience—judging from what has already been received in the shape of fees in the County Courts, I firmly believe that if it were deemed desirable that the suitors should pay this, the additional business which will flow into these Courts would produce an amount more than sufficient to cover it; and if it did not I as firmly believe that the Country would cheerfully supply what was wanting, or would even readily consent to pay every shilling of the whole amount in consideration of so very great a boon. Nay, I will go further, and unhesitatingly assert, that if these Bills of Lord Brougham's should pass, not only ought the Judges to be increased in number, but their salaries, and the salaries of the Clerks of the Courts, ought also to be increased, and I am persuaded that such increased salaries would be paid most willingly. I think it will

then become the duty of the Government to reconsider the question of salaries, and to place the office of Judge on such a footing as to make it an object of ambition, and to induce the best men at the Bar to accept it. No one hesitates to cast all sorts of duties on the Judges of the County Courts—to give them jurisdiction as to Charities, Testamentary matters, Bankruptcy, Insolvency, &c. &c. (all quite right if done with a due regard to the consequences); but none seem to bestow a thought on their powers of endurance, or how these duties are to be performed; how all this labour is to be encountered; or of rendering the Courts efficient for their purposes. And no one for a moment dreams of the propriety of awarding to the Judges incomes befitting the station which they wish them to occupy. I, however, not only hope to see the salaries of the County Court Judges considerably increased, but I also hope that instances of superior ability and of high mental endowments may meet with their proper reward, and that where these are displayed, the Judge may be promoted to a higher sphere of usefulness. I am of opinion that stinginess, in a matter of this description is exceedingly bad economy, and that no one would grudge the necessary salaries, provided the Courts are made what they ought to be. I consider that their being made efficient would of itself tend to economy—to a proper and a wise description of economy. I think the proposition that the Judges shall, *ex officio*, be Commissioners of the Court of

Bankruptcy—an important one for this purpose, inasmuch as if it should turn out that those acting in the Metropolitan districts have sufficient time to undertake the business of the restricted Court of Bankruptcy, then these Commissioners, and also their Registrars, might be abolished as vacancies occur. And if Criminal jurisdiction were also given, and the offences which are now tried at Quarter Sessions were speedily brought before these Judges and promptly adjudicated upon by them, not only would an immense saving immediately result from it, but petty offenders would no longer have to be confined for long periods between committal and trial, the defilements of the gaol and utter wreck of character produced by them would be avoided, and the expense of the prisoners' sustenance during this period would be saved, as would also the expense of carrying the prosecutor's witnesses from one part of the county to another. This, my Lord, is no Utopian scheme I am offering to your attention; nor is it without precedent. It is in existence in Scotland at this moment, and has been so for years; and it has moreover there been found to work most admirably.

But, if your Lordship prefer it, let this question as to the number of Judges also be left to time. Start with those of the Commissioners of the Court of Bankruptcy who may be found willing to become County Court Judges—the ten additional Judges proposed by Lord Brougham—and such of the Re-

gistrars of the Court of Bankruptcy as have the requisite qualification, and may on inquiry be found by your Lordship fit and proper persons to be promoted. Start with these and attach one of them, so far as they will go, to each of the County Court districts in which the largest towns are situated, and, to save the necessity of continually going to Parliament, take a general power to the Lord Chancellor to appoint from time to time such further number of Judges as may be found to be necessary, and a very little time will shew whether the Courts are popular, and what will be the number of Judges required.

I have already said that my Lord St. Leonards' plan of retaining the London and District Courts of Bankruptcy, and of giving to them power to act in aid of the Court of Chancery, might mitigate some few of the evils complained of. It would do this and it would do no more. It would not be satisfactory—it would not enable the people to commence and to prosecute their suits near to their own homes. And there is this further objection to it that as regards the little it would accomplish (Chancery References and winding up Estates of deceased Traders), it would do it in the most inconvenient way possible, for it would still keep up a most annoying and altogether unnecessary and expensive amount of travelling which would far more than counterbalance any good arising out of it. It would be all very well as regarded London and the seven

other places where the District Bankruptcy Courts are held—it would doubtless be of advantage to these places—and to places in their immediate vicinity, but it would be of none whatever as regarded the country at large.

Several other objections to it occur to me, and unless I am much mistaken his Lordship would have been met with a rather formidable one on the very threshold, viz. in the *name* of the Court. The name of *Bankruptcy* would of itself be sufficient to scare away suitors and to render the Court unpopular. It is of no use to argue about the silliness or the absurdity of such an objection. There is no doubt that it exists. The dislike, the aversion, the repugnance, the prejudice against the name exists, and there is no getting over it or rooting it out except by giving the tribunal an entirely new title. The Commissioners themselves, I believe, admit this, and feel, that while the old name is retained, it is vain to attempt to bring business of any other description to it, and to create a new Court would surely be unadvisable if we already have Courts to which the jurisdiction may safely be entrusted. But even were there nothing in all this, and supposing for a moment that Lord St. Leonards' scheme would be sufficient in extent, the objection on the score of distance—the impossibility of so placing these twelve District Commissioners of Bankrupts as to give the full benefit of his Lordship's

powers in aid of the Court of Chancery to the community at large, and of preventing the annoyance and expense attending suitors having to travel great distances, and to employ agents, seems of itself to be conclusive against it. And his Lordship's proposal of "refraining from filling up vacancies which may occur in the number of the Commissioners in the country, so as to bring the number more in accordance with the requirements of the district," would only have the effect of aggravating these grievances.

I am aware, my Lord, that this is controverted. I am aware that some persons think it quite right that the District Courts of Bankruptcy should be retained, and made auxiliary to the Court of Chancery; and I find in a paper of suggestions, written by one of the district Commissioners,* the following observations, the applicability of which, however, I confess, I cannot well perceive. The Learned Commissioner, at page 8, says: "One vast and striking advantage of the Bankruptcy tribunals is, that they are local Courts, constantly sitting. The suitor is not required to consume his time, and expend his money in journeying to London. Prompt justice is brought to his door." This, if it were true, would, no doubt, be an exceedingly good

* "Suggestions offered to those interested in the Reform of the Law, by Wm. Scrope Ayrton, Esq., F.S.A., one of the Commissioners of Her Majesty's Court of Bankruptcy." London, Pickering, 1851.

argument in favour of continuing these Courts; but unfortunately for the Learned Commissioner, it is not only not true, but it is very very wide indeed of the truth. It is true that the Bristol, Birmingham, Liverpool, Manchester, Exeter, Newcastle, or Leeds suitors—the suitor residing at the places where these District Courts are located, would not be required to consume his time and his money in journeying to London, and that prompt justice would be brought to *his* door. This is all very true and very well; but what is to become of other places—of places at a distance from these local Courts? We shall see presently.

For the 52 Counties in England and Wales, we have only the London Court and the seven district Courts. The Bankruptcy business of the City of London, and of no less than 17 Counties besides, is all prosecuted in London, and that of the 35 remaining Counties is prosecuted in the seven District Courts; viz., at Bristol, Birmingham, Exeter, Leeds, Liverpool, Manchester, or Newcastle—the Birmingham Commissioners holding occasional sittings at Nottingham, the Exeter Commissioners at Plymouth, and the Leeds Commissioners at Hull and Sheffield. The Counties of Bedford, Berks, Buckingham, Cambridge, Essex, Hants, Herts, Huntingdon, Kent, Middlesex, Norfolk, Northampton, Oxford, Rutland, Suffolk, Surrey, and Sussex, are all of them within the jurisdiction of the London Court; while, of the 35 remaining Counties, there are only six in which

any Bankruptcy Courts are held. Norfolk, with its 433,000 inhabitants; Hampshire, with its 402,000; Suffolk, with its 335,000; Northamptonshire, with its 213,000; Cambridgeshire, with its 191,000; Oxfordshire, with its 170,000; Huntingdonshire, with its 60,000; Rutlandshire, with its 24,000, all come to London; and so also does the southern division of Wiltshire, and a portion of Dorsetshire. The consequence is, that

				Miles.
Norwich .	with 68,000	inhabitants,	has to go	108
Yarmouth .	„ 26,000	„	„	124
Southampton	„ 34,000	„	„	77
Isle of Wight	„ 50,000	„	„	90
Winchester .	„ 25,000	„	„	69
Ipswich .	„ 23,000	„	„	69
Northampton	„ 23,000	„	„	66
Cambridge .	„ 27,000	„	„	51
Oxford .	„ 20,000	„	„	54
Huntingdon .	„ 20,000	„	„	59
Salisbury .	„ 8,000	„	„	81
Brighton .	„ 65,000	„	„	58
Dover . .	„ 28,000	„	„	71
Lewes . .	„ 25,000	„	„	50
Hastings .	„ 21,000	„	„	66
Canterbury .	„ 14,000	„	„	55
Aylesbury .	„ 23,000	„	„	40
Newport Pagnel	„ 23,000	„	„	50
Poole . .	„ 12,000	„	„	107
Shaftesbury .	„ 13,000	„	„	100
Blandford .	„ 14,000	„	„	103
Sturminster .	„ 10,000	„	„	108
Wimborne Minster	„ 17,000	„	„	132

Maidstone	.	„	36,000	„	„	34
Colchester	.	„	19,000	„	„	51

So much for the London district; and I will not fatigue your Lordship by going in the same way through the others; for a single glance at the map will show in a moment that, as regards these, matters are in very much the same state—that the inhabitants of many large and opulent towns have to travel very considerable distances to the District Bankruptcy Courts; and that even if Commissioner Ayrton's suggestions were adopted, and the Commissioners were empowered to perform the duties of Masters in Chancery; or if they had my Lord St. Leonards' proposed powers in aid of the Court of Chancery and "Dead Men's Clauses" conferred on them, the suitor, although he might not be "required to consume his time and expend his money in journeying to London," would still, in by far the majority of cases, be no better off; for the consumption of time and expenditure of money in journeying elsewhere would, as regards these, amount to pretty much the same. It is idle, therefore, and a delusion, to say to the suitor, that by means of the Bankruptcy Courts "prompt justice is brought to his door," or that it ever can be so—it is quite idle to talk of these Courts as capable of supplying the wants of the community generally; and when your Lordship finds such places as Carlisle, Chester, Derby, Durham, Gloucester, Lancaster, Leicester, Lincoln, Norwich, Preston, Shrewsbury,

Stafford, Sunderland, Southampton, Huddersfield, Bradford, Halifax, Worcester, York, without any Court—finds that in only *six* out of all the counties in England and Wales, and in only *three* out of all the county towns do the Courts of Bankruptcy hold any sittings—that there is not, as Commissioner Ayrton candidly admits, sufficient Bankruptcy business to occupy the time of the Commissioners—that, in truth, both in London and in the country, there is not sufficient Bankruptcy business to occupy half the time of the learned Commissioners — that the Bankruptcy Establishment is itself in a state of insolvency—that for the year 1851, with a revenue of £79,794. 3*s.* 5*d*, the expenditure exceeded the income by upwards of £14,000*—your Lordship will, I feel confident, arrive at the conclusion that some sweeping reform of these Bankruptcy Courts is imperatively called for.

The circumstance of the Court being generally so far removed from the residence of the bankrupt is not only exceedingly inconvenient, but it must tend also to defeat one of the great ends of all Bankruptcy proceedings, namely, the inquiry into the bankrupt's conduct as a trader; for this inquiry can obviously be no where so well or so effectually carried on as at or in the immediate neighbourhood of the place of trading. No doubt cases may arise where it may

* See Return to an order of the House of Lords, dated 12th March, 1852. Sessional Paper, No. 58.

be expedient to prosecute the Bankruptcy elsewhere —where, for instance, a large majority of the creditors live at a great distance from the place of trading, or where it can be shewn that it will be more to the interest of the creditors generally, or for the benefit of the estate, to have the proceedings conducted at another place; and for this my Lord Brougham's Bill consequently provides, by giving power to the Chief Commissioner of the Court of Bankruptcy to make special order in any such matter. But, as a general rule, I consider his Lordship's proposition that they shall be had on the spot, or at least as near as possible, to the residence or rather to the place of trading of the Bankrupt, to be most judicious and proper. Moreover, it has this further recommendation, that it is a restoration of the old rule which was in force prior to 1842, and it is also in harmony with the recommendations of the Common Law Commissioners, who in their Fifth Report suggest a mode of bringing "prompt justice to every man's door," very different, indeed, to that of Commissioner Ayrton. The Common Law Commissioners say, "It appears to us to be "expedient that the whole kingdom should be "divided into districts, for the purpose of establish-"ing Local Courts upon an uniform system, and "that provision should be made for the trial of "causes at such places as shall be best accommo-"dated to public convenience, and shall most effec-"tively exclude the evil of expense in the convey-

" ance and maintenance of witnesses (which now " constitute the principal part of the costs of a " cause), and the inconvenience now felt in detain- " ing parties, jurors, and witnesses at a distant place " of trial. The limits of such districts must, of " course, depend much on the extent of population " and the mode in which it is distributed; but in " order to effectuate the general principle it would " be desirable that Courts for the trial of causes " should be held *in every large market town con-* " *taining a population of* 20,000 *; that the suitors in* " *a town containing* 10,000 *inhabitants should not* " *be under the necessity of travelling more than ten* " *miles to the Court; and that the utmost distance* " *of parties from the nearest place of trial should* " *not exceed twenty to twenty-five miles.*" *

I will now call your Lordship's attention to what fell from Lord Cottenham, on moving for a Select Committee (26 June, 1843), to inquire into the operation of the Act of 5 and 6 Vict. c. 122 (the Act establishing the District Bankruptcy Courts). His Lordship is reported, in 'Hansard,' to have thus expressed himself:—

" Lord Cottenham rose, he said, in pursuance of notice, to call their Lordships' attention to the effects of the change made in the law relating to bankruptcy by the Act of last Session. He believed he should be able to satisfy their Lordships that the alteration then introduced was not only unnecessary, but that it had been in its operation

* See Fifth Report of Common Law Commissioners, 1833, p. 18.

very prejudicial. The remedy was easy; it would have been more easy, undoubtedly, to have provided a proper remedy before the Act of last Session was passed; but whether easy or not, if he succeeded in demonstrating the great evils which that system had produced, it was his hope that their Lordships would feel themselves obliged at any cost to apply a remedy. It was not his intention to blame those who took part in passing this bill; his sole object was to remedy what he believed to be a great public mischief, and if his noble and learned friend on the Woolsack, when this discussion was closed, were satisfied that the mischief was in fact attributable to the Act of last Session, he hoped to have his assistance in framing a measure for its removal. The first point to which he should wish to direct their Lordships' attention was, the particular locality of the several Courts established throughout the country for the administration of the law. He should not ask their Lordships to follow him through any legal argument; but he would state a few facts to shew the nature of bankruptcy transactions, and to lead to the conclusion that Courts situated at a great distance from the residence of the parties whose affairs were to be administered could not possibly do justice to them. The object of the laws of bankruptcy was, when a trader became insolvent, to secure the property for the benefit of those who had claims on it; next, to administer it faithfully; and, lastly, to discharge the trader, after he had given up his assets, and they had been divided among those who had claims on them, from further liabilities. These laws had originated in an Act of Henry VIII., but had not been extended into anything like a system till the reign of Elizabeth. It was obvious, that, as the object of the law was to take away the property of the insolvent, it became necessary to have a test of insolvency; therefore the Act of Parliament adopted certain criterions whereby to test insolvency, as, for instance, when a man shut up shop, and denied himself to

his creditors, or when he absconded from his creditors, this was deemed to be fair ground for a commission of bankruptcy. This law was applicable only to persons carrying on trade. A man applying to have the bankruptcy law carried into effect had to prove himself a creditor, as well as that his debtor was a trader who had committed an act of bankruptcy, otherwise the law would not impose its liabilities on him. When a person applied for a commission he had to go before the Commissioners and establish these three propositions. The Commissioners then allowed further proceedings, and a commission was issued to ascertain who were the creditors, and divide the estate among them. The next step was for an officer of the Court to take possession of the estate, as far as it could be laid hold of. He mentioned these steps with the view of shewing that every step taken under a Commission of Bankruptcy required the administration to be on the spot, or as near it as possible. If the Court were 100 miles off, it was obvious that very great expense must be incurred. When the estate was to be seized by means of a messenger, if the Court were in the neighbourhood, it was no expense for the messenger to go and possess himself of it; but if it were situated at any great distance, it was quite obvious that great expense must be incurred by the employment of a messenger for that purpose. The next step was the choice of assignees, who had the duty cast upon them of collecting the estate, and dividing it among the creditors. The assignees were elected by the creditors. And all these things must be attended with great expense if the place of the bankruptcy was situated at a great distance from the Court. If it was in the neighbourhood, it would be easy to manage this business; but if the persons had to travel to a distance, they would either not go at all, or go at great expense and inconvenience. Another step was the proof of the debts, which must be done by the creditors going before the Commis-

sioners in person, or making affidavit. That could not be done without great expense if the Court was situated at a distance from the residence of the bankrupt. Again, the realizing of the estate would be difficult and expensive if the officers must act at a distance from the authority under which they were commissioned. Then came another proceeding—the division of the estate among the creditors. He had not the means of stating the exact average dividend in country bankruptcies, but he could give an approximation to the correct sum, and he believed he would be considerably overstating the amount at 5*s.* in the pound. It had been stated so low as 2*s.* 6*d.* In country bankruptcies, the greater proportion of the creditors were for small debts, and when the sum was divided by four the interest of the creditor was very much reduced, and he had but a small amount to receive. How then was he to receive it, if the Court were far off? Was he to go perhaps 100 miles to the place where it was to be distributed, to receive, perhaps, 2*l.* 5*s.*, or was he to send some one in his place? Coming, lastly, to the grant of the certificate, which was formerly at the option of the creditors, but was now the business of the Commissioner, whose duty it was to hear any objections that might be made by creditors, if the creditor attended at all for that purpose, it must be at the inconvenience of a long journey. It was quite obvious, that, having got all he could expect from the estate, he would not be induced to undertake that journey from a sense of justice alone, to prevent an unworthy person from obtaining a benefit. He apprehended no further statement was required to satisfy their Lordships that these several duties could not be properly performed except by a jurisdiction near the residence of the bankrupt. From the time of Queen Elizabeth to the close of last Session of Parliament this system was adopted. There were no regular Courts of Bankruptcy except in London, but each case had a Court established for the particular purpose of

trying it; and there were Courts of Commissioners in all the considerable towns of the country, to whom, on a bankruptcy happening in the neighbourhood, authority was deputed by the Great Seal to do what was necessary to be done for the execution of the bankruptcy laws in that particular case. There were in all about 140 lists of barristers and solicitors, whose Courts where held on such occasions as near as possible to the place where the bankrupt lived. The Northampton petition stated that during the year preceding the Commissioners had met in no less than 300 Courts or places for the purpose of administering the bankruptcy laws. This system was not unobjectionable. It was not always possible to obtain competent persons in so great a number, each of the lists containing five, to exercise those duties, and it might also occur that they might have some connexion with those whose affairs they administered. This inconvenience had been long felt, and he had on several occasions unsuccessfully endeavoured to induce their Lordships to apply a remedy. That which suggested itself to him was, to divide the country into districts, to place two persons in each, one of whom should reside at the principal place, and the other go a circuit within the district, holding sittings in the most considerable places, for the purpose of administering that part of the business which could not be conveniently transacted at a distant point. This was recommended by the Commission which made a Report in 1841, and which suggested several alterations in the law, independently of the mode in which it was to be carried into effect. All those alterations required the administration of the law to take place in the immediate neighbourhood of the scene of the bankruptcy. One alteration provided that if the bankrupt was likely to run away he might be arrested, and it provided very properly, that, being arrested, he should have immediate means of applying to the Court for his discharge, if the grounds for his arrest could not be shewn to be

good. There was another important alteration recommended by the Commission. A great hardship often arose from the possibility of a man's being declared a bankrupt without his knowing anything about it. Many a man who was quite solvent had found himself, to his great surprise, advertised as a bankrupt. This system was originally adopted as a precaution against a bankrupt's making away with his property, as he might do if he had notice of the proceedings instituted against him. The alteration in question went to stipulate that if the bankrupt could satisfy the Commissioners that there had been no good ground for those proceedings they should go for nothing. He had stated, that, formerly, the assignees to a bankruptcy were chosen by the creditors. Since then an alteration had been introduced, by which official assignees were appointed to look after the estate, and in London, indeed, this alteration had been productive of great benefit. The creditors in London had not the time to look after the estate of a bankrupt, and he believed that in consequence of the change in the system a great mass of property had been saved. But it was obvious that the official assignee ought to be near the property which he was expected to look after. By the Act of last Session, the system of official assignees was extended to the country. But suppose the property to be realized lay 50 or 100 miles away from the official assignees, great expense must in that case be incurred, and the estate would derive little benefit from it, the creditors losing the security which it was intended they should derive from the active interference of a well-informed person. So much of the Report of 1841 as was adopted produced the Act of last Session. By an Order in Council, the London district was greatly extended; in one direction 122 miles, so as to include Yarmouth. He would now state some of the towns that had been deprived of their own Courts and been obliged to go to a considerable distance for all bankruptcy

proceedings. Nottingham, with 80,000 inhabitants, had to go 50 miles;* Boston, with 14,000 inhabitants, had to go 100 miles; Louth, with 60,000 inhabitants, 90 miles; Yarmouth, with 25,000 inhabitants, 122 miles; and Norwich, with a population of 72,000, 122 miles From the return of 1841 it appeared that of the fiats sued out, 1,714 were executed in places not now enjoying the benefit of a local Court. In 866 of those fiats, the distance the parties would have to go was 40 miles, and in 176 it was as much as 80 miles. The majority of the debts in those fiats was under £10. A petition from Leicester stated the details of five fiats, in which of 213 debts, 117 were under £5. and 75 under £10., and no less than 178 creditors proved in person. In many of those cases the dividend would not pay the expenses of the creditor's journey, and the natural consequence would be, that the system would act as a great discouragement to the creditor troubling himself at all in the matter. Not only had the creditor to make a long journey and to be at great expense of money, time, and trouble on his own account, but he would often be put to additional expense in taking his witnesses with him, and thus the mere show of opposition might be sufficient to induce an honest creditor to abandon his claim altogether. In the statement from Northampton, signed by the solicitors of the town, it was shewn that the expense of opening a fiat had been so much increased by the removal of the Court to a distance, that the costs often amounted to £20., and even to £40. In the statement of 149 London solicitors acting as the agents of 1,200 country solicitors, embodying therefore to a large extent the information of that branch of the profession best acquainted with the law of bankruptcy, the expenses of opening a fiat were stated to amount to from £30. to £60. owing to the great distance

* Since in part remedied by an Order in Council, directing the Birmingham Commissioners to hold sittings at Nottingham.

which parties had to travel themselves, and to take their witnesses, and the result, of course, was a great waste of the estate at the very commencement. All these expenses were naturally owing to the system established last year. It appeared that the rate of remuneration allowed was 6*d.* a mile, and £1. 6*s.* 8*d.* a day besides. Snppose the estate to be taken possession of was 100 miles off, the messenger would have to be paid his travelling expenses there and back. Was he, then, to remain there? There was no difficulty in his doing so when the estate was in the same town as the Court; but if the messenger was sent to one place 100 miles off, and to another in an opposite direction 50 miles off, he could not of course remain to take charge of both. The consequence was, he must employ an agent, and this they would find, by referring to page 182, he was expressly authorized to do; and it was moreover directed, that after an agent had been appointed the messenger himself was not to go again without an especial order. The official assignee never went at all. What chance was there under such circumstances, that the estate would ever be realized? The books had of course been carried away, and put into the hands of the official assignee. The parties were probably at Yarmouth, the books in London. The messenger was not to go down again without a special order. The agent was probably a common person, with little or no information. What, under such circumstances, was to become of the interests of the creditors? The next step was the choice of assignees. He had already stated, that a large proportion of the creditors had not a sufficient interest to induce them to undertake the trouble and expense. If they resided in the same town in which the Court was placed, and if they exercised the right of electing the assignees, no doubt they would look after their own interests, even when the amount was inconsiderable, because they might do so without any material sacrifice of time and trouble. Another point to which it was neces-

sary he should refer was this: It was very desirable that throughout the proceedings the bankrupt should himself be present to explain every point that might appear to be obscure. The official assignee had the books, it was true, but in many cases the books proved nothing. A question might arise whether a debt that appeared on the books should be sued for or not. Without some explanation from the bankrupt, it might often be impossible to know whether it would be expedient to incur the expense of doing so. Then, if a creditor came to prove a debt, who was to know whether he ought to be allowed to prove? The bankrupt might know, but how could the official assignee? At almost every moment matters arose on which those who had to administer the estate must have information from the bankrupt. The next, and the most important of all the points to which he should direct their Lordships' attention, was the effect of this Bill on the small creditors. He had already stated, that a large proportion of the creditors were for sums under £10. and £20. The petitions which had been presented to the House shewed that the creditors for these sums lost all the benefit of the new enactment. The expense and trouble necessarily incidental to proving a claim of this description were such, that they preferred abandoning their rights to attending upon these Courts of Bankruptcy. It was so stated in the petitions; and all his experience tended to confirm these allegations. What was the effect of this? To take their property out of the hands of the small creditors, and to put it into the hands of the rich creditors. The latter, of course, thought it worth while to prove their debts, and they were willing to incur expense, for they were sure to derive a benefit from it. But they have another advantage. Of course the sums belonging to poorer creditors, when not claimed, go to swell the fund to be divided amongst the rich. So that the effect was to take their property from those least able to bear the loss, and to hand it over to those who had the

strongest interest in the commission, and were best able to bear the expenses of its proceedings. He had stated, that these creditors of £10. and £20. were generally excluded. That this must be so, was proved from the mere calculation of the expenses necessarily incurred, either in taking a journey to the Court of the Commissioner, or in arming themselves with an affidavit to make that proof. The petitions stated, that the expense of employing an attorney and drawing up an affidavit was from 30*s.* to £3. and this expense was to be incurred for the chance of getting at some future period, perhaps, a dividend of 50*s.* This calculation shewed that it was no rash statement to say that such creditors were actually excluded from all the benefit of this measure. What he had stated hitherto was the obvious result of the arrangements which had been made under this system, or was derived from the petitions of solicitors, or from returns on the table of the House. He was furnished, however, with particular instances which fell in with what he said, and confirmed what he had attempted to establish. If their Lordships appointed a Committee, these parties were ready to verify the statements they supplied to him; if they were not, of course those statements would fall to the ground. He should avoid stating the names of the parties, but the first occurred at Bodmin, forty-four miles from Exeter, where a chief commissioner was appointed. The bankrupt stated, that fifteen months before the commission his property was worth 8,779*l.*, while 700*l.* was all that was realized under the bankruptcy. It appeared that but two creditors under 10*l.* proved, and the greater number abandoned their claims. There was another case at Leicester, 112 miles from a chief Court. The balance sheet of the bankrupt shewed he had eighteen creditors, but not one of them proved. The petitioning creditor consequently got the whole of the estate. This only proved that the people of Leicester had a fund of good sense, which prevented them from pursuing

a phantom they were never likely to catch; namely, a bankrupt estate administered 112 miles from the residence of the bankrupt. There was another case supplied him from a place in Shropshire, which was seventy-four miles from a principal Court, where only four creditors proved, and these were for sums above 100*l.*; all the others abandoning their claims. It was unnecessary to trouble their Lordships with more of these cases; he had stated enough to shew that the present system tended to the great waste of the estate, and the great hardship of small creditors. But let its general effect be also considered. When an estate was administered 100 miles from a place where a man lived, he was pretty sure not to be much troubled with creditors who could prove. Where the commission was taken out for a fraudulent purpose, and to secure the trader against future liability, it was no bar to the creditor that he lived at a distance from the chief Court of the Commissioners; but it was a denial of justice to the *bona fide* creditor. Not only did this power of attracting all the cases to the chief Court in each district operate favourably to the person who was anxious to commit fraud, but it had a powerful effect in tempting to the commission of fraud. The man disposed not to act fairly, might do so with impunity under the new system. Formerly, the creditors had it always in their power, when they suspected fraud, to have the commission issued to the place of residence of the bankrupt. That security was now gone for the creditor; but it remained in full force where it was the object of the fraudulent bankrupt to get the debts proved at a great distance from the places where the creditors resided. This was the case on which he did not ask their Lordships to come to a final resolution; but had he not stated enough to shew that the alteration of the law was necessarily productive of great injury, and was proved to have been so by the experience of the solicitors who had petitioned, and by the returns on the table.

He asked their Lordships to appoint a Committee, by which the facts he had stated might be investigated. He could not suppose that the circumstance of the bill being brought in by his noble and learned friend would induce him to adhere to it at all events, and even after it was proved by the evidence he had brought forward, that it did not answer its purpose. He hoped their Lordships would not allow the Session to close, and leave in operation a system which was a denial of justice to all creditors of insolvents for a small sum. The noble and learned Lord concluded by moving for a Select Committee to inquire into the operation and effect of the Bankruptcy Act of last Session." (*See* Hansard, 1843, vol. lxx. page 341.)

Such were my Lord Cottenham's opinions of the working of the Act of 5th and 6th Vict. c. 122. His Lordship may not have been strictly accurate in every particular, and it is believed over-estimated the difficulties of the official assignees as to the collection of the assets, and the realization of the estate, and possibly also the expense attending the drawing-up of an affidavit for the proof of a debt, in cases worked at a distance from the residence of the bankrupt; but as to the main grievances, further experience has shewn that he was correct. He had in view one Court, and one Court only, for bankruptcy, insolvency, and small debts; and here we find him advocating something very like the scheme which had previously been proposed in Lord Brougham's County Courts Bill of 1833, and which is now again renewed in the present District Courts of Bankruptcy Abolition Bill, viz., the 'dividing the country into districts, and placing two persons in each, one of whom should reside at the principal place, and the other go a circuit within the district, holding sittings in the most considerable places.' His Lordship states, that this was recommended by the Commission appointed to inquire into Bankruptcy and Insolvency, in their Report, and the portion of that

Report more particularly referred to by his Lordship runs thus:—"In addition to the ordinary duties of the judges of the Court, other duties might be assigned to them, particularly in the country, with great advantage to the public service. In the event of the establishment of local Civil Courts for the recovery of debts, the duties of the judges of such Courts might be taken by them; so also, Commissions of Lunacy, and other special Commissions, from time to time issued out of Chancery, might be directed to such judges." (*See Report of Commissioners of Inquiry into Bankruptcy and Insolvency*, 1841, *page* 27.)

The whole of the debate in the Lords is well worthy of perusal. Lord Lyndhurst (then Chancellor) opposed the motion, stating that he considered it to be unprecedented and premature, the Act having only come into operation the November previous, and that all the objections to it arose from the formation of the districts. Lord Brougham also spoke, and although he did not support Lord Cottenham's motion, observed, "it would have been well if the measure had formed part of the bill, which he had failed to carry, to provide for the appointment of local judges, who should, in their local Courts, bring to every man's door the blessing of cheap, easy, and, above all, satisfactory justice in the trial of causes up to a certain amount, and to whom should be added an equitable jurisdiction, as well as power to act in commissions of bankrupt," admitting at the same time the force of many of Lord Lyndhurst's observations; and my Lord Campbell, warmly supporting Lord Cottenham, stated, that in his opinion no answer had been given to the argument of the noble and learned Lord who had made the motion, and also urged that the district Courts, instead of being stationary, should be ambulatory.

Mr. Johnes, too, in the letter from which I have already quoted gives very good reasons for a trans-

ference of the Bankruptcy jurisdiction to the County Court. At page 9, he says:—

"While respectfully concurring in the general principle of a Union of the Courts of Bankruptcy with the County Courts, I beg to express my opinion, that the mode of administering the Law of Bankruptcy should be assimilated to the system which already prevails in those Courts in cases of Insolvency. There is no difference in principle between Bankruptcy cases and those cases of Insolvency, which are already within the jurisdiction of the County Courts. Now, cases of Insolvency are brought forward and decided upon in the district of the insolvent's residence. I consider it obvious that the same principle should be pursued in matters of Bankruptcy, and that an adherence to that principle is absolutely indispensable to the fulfilment of the two grand objects of a sound Bankruptcy Law—viz., the repression and punishment of fraud, and the protection of misfortune. My views on the subject are found on the following grounds, presented by experience:—The great advantage of local Courts consists in the immunity the suitors enjoy from the expenses of travelling and of employing professional men, living at a distance—and also in the immunity from the indefinite loss of labour and time, which is always involved in prosecuting a suit or a fiat in a Court distant from the suitor's residence. The existence of this advantage is far more indispensable (to induce a creditor to act) in cases of bankruptcy than it is in the instance of actions for debts. When a debt (whether large or small) is sued for—the plaintiff knows—(provided his claim be a just one), that he may reckon—generally speaking—on a full payment of his claim with costs. It may, therefore, very commonly be worth the plaintiff's while, in such cases, to incur a good deal of trouble, loss of time, and expense. But in cases of insolvency or bankruptcy, the

position and the feeling of creditors are quite different. Each claimant well knows (however just his claim or clear his proofs) that he can only expect to receive a dividend of perhaps not more than 10*s* or 5*s* in the pound, or even less. Hence there is a general disinclination (in cases of bankruptcy or insolvency) on the part of creditors to give themselves much trouble, or to incur any expense. Their disposition commonly is to relinquish in despair all prospects of redress. Nevertheless, where the investigation is conducted in the neighbourhood, a detestation of injustice and fraud are commonly sufficient motives to induce creditors to come forward to oppose the applications of fraudulent insolvents, while commiseration for adversity will also commonly impel creditors to assist the petitions of debtors, who may have been overtaken by unforeseen calamities, unaccompanied by misconduct. I have had to adjudicate on numerous cases of both classes, and in the examples which have come before me, I have been irresistibly impressed with the necessity (more imperative even than in cases of debts) of having the affairs of an insolvent brought to the test of enquiry in the district in which his former creditors, friends, and patrons reside. The benefits of the Law of Bankruptcy will, I think, be found to consist chiefly in prevention rather than in cure. In the great majority of districts, there will probably not be many cases of bankruptcy provided a sound administration of the law be adopted, of which I venture to think the most essential element will consist in trying the bankrupt's conduct at "his own door." The main end of a good Bankruptcy Law should, I conceive, be to *deter* men from reckless and profligate trading, calculated to bring disasters on their creditors much more than on themselves. Now, under the existing law, knaves may safely speculate on the improbability of their creditors opposing their certificate in a town perhaps seventy or eighty miles from their own homes. In an ordinary action the plaintiff and defendant

have an equal interest in the result, and both may be equally rich or equally poor. But with the fraudulent bankrupt the unhappy creditor has to contend on unequal terms. In a case, for example, of a failure to the amount of £1000, the whole amount of debts may be (and not unfrequently are) due to poor creditors, having claims not commonly exceeding £20 to £30. In such case a dishonest debtor possesses, under the existing system an overwhelming advantage. It is well worth his while to incur a distant journey for the sake of liberating himself from claims to the extent of £1000. But it cannot be worth the while of an individual creditor, for the sake of a small sum, to move from his home, and incur travelling and law expenses, that can scarcely fail far to exceed any dividend he will ever obtain. The larger the liabilities (in other words, the more reckless the conduct of the bankrupt) the more irresistible will be the power the present system affords him of baffling his creditors, through the instrumentality of the very resources which he has derived from their abused confidence. A bankrupt or insolvent (however unfortunate) is really seeking from the law a favour at the expense of his creditors. Common justice, therefore, requires that, before obtaining his certificate, he should render to them in their own neighbourhood an account of the transactions of his life. It is preposterous that he should be permitted to procure immunity from their undenied claims in localities in which they can have no chance of appearing without incurring expenses, involving new losses and misfortunes in connection with his affairs. The claims of creditors to an investigation of a bankrupt's affairs, in their own neighbourhoods are, I conceive, imperative, especially when it is borne in mind that the County Courts have already been established in every locality."

But what is now proposed by my Lord

Brougham is, as I have already said, neither more nor less, than a return to the old rule. His Lordship proposes to take advantage of the County Courts for Bankruptcy proceedings; to engraft on them the system of official assignees which has been found to work so well, both in London and in the country; and, to return to the old practice of prosecuting every bankruptcy, as near to the place of residence or trading of the Bankrupt as is possible—preserving, also, the old exception to that rule, by giving to the Chief Commissioner power to order otherwise under special circumstances. Formerly (I am only going back to 1842), there was the London Court, with six Commissioners, and a jurisdiction of forty miles around London—and there were one hundred and thirty-two lists of Commissioners for all the rest of England and Wales. The rule, then, was to work or prosecute the Bankruptcy in London in all cases in which the Bankrupt resided in London, or within forty miles of it, and in all other cases, before the list of Commissioners for the place nearest to his residence. If the Bankrupt did not reside in London, or within forty miles of it, the Solicitor at the time he bespoke the fiat, was required to certify which of the places for which lists of Commissioners were formed was the one nearest to the Bankrupt's residence, and to the list for that place, the fiat was, as a matter of course, directed. This was the old rule. And the exception to it was—that whenever it could be shewn that a majority of the

creditors lived elsewhere; or that it would be more convenient to the general body of the creditors; or for the benefit of the estate, to prosecute the fiat in London, or at any other place—then to the London Commissioners, or to the list of Commissioners for that other place, it was accordingly directed under a special order.

Such was the old rule, and such the exception, and if in 1842, if, prior to the 5 and 6 Vict. cap. 122, County Courts had been established as they are now, no one can reasonably doubt that jurisdiction in Bankruptcy would have been given to them, and that these District Courts of Bankruptcy never would have been thought of. Since then, however, since the extension of the jurisdiction of the London Courts and the establishment of the District Courts of Bankruptcy, all Bankruptcies have been prosecuted either in London or in one or other of the seven District Courts. No matter where the Bankrupt lives or carries on his trade. If he lives in London, or at or near to any of the District Courts, it is all very well, and there is nothing to complain of—but if he and his creditors live, as they frequently do, at a distance from the Court, then ensue the grievances of which I complain, and which are so well and so forcibly stated by my Lords Cottenham and Campbell, and also by Mr. Johnes; then ensues the "consumption of time and expenditure of money" in journeying to the place where the Bankruptcy Court is held, and which

Commissioner Ayrton seems to imagine can only occur when *London* is the point to be arrived at. These grievances and this consumption of time and expenditure of money Lord Brougham's Bill wisely proposes to remedy by prosecuting the Bankruptcy in the London Court, in all cases where the trader resides in London, or within 20 miles of the General Post Office, and in the County Court for the District in which he resides in all other cases, reserving power to the Chief Commissioner to make order for its prosecution in London or elsewhere, without regard to the place of residence, or trading, on proper cause shewn.

This seems simple enough. The Court of Bankruptcy will still have power on its being shewn that a majority of the creditors live at any particular place, or that it is for the benefit of the estate, or for the interest of the general body of creditors that the Bankruptcy be prosecuted there, to make order accordingly. The convenience of the greatest number is the thing to be attended to, and this appears to be amply provided for and secured. The County Courts already have jurisdiction in Insolvency —all Insolvencies beyond 20 miles from the General Post Office are prosecuted in the County Courts— no difficulty is found to arise respecting them—nor will any arise in respect to Bankruptcy which cannot easily be provided for.

But if the prosecution of matters in Bankruptcy, at a distance from the place of residence, or trading

of a Bankrupt be inconvenient, how much more so, my Lord, must be the prosecution of matters in Equity at places distant from the residences of the parties and their witnesses. Bankruptcies are of course most numerous in the large and important commercial towns, and always must be so—but a place which produces little or no Bankruptcy may, nevertheless, furnish a very considerable amount of Equity business. Take for example, the cities of Chester, Lancaster, and York which, I will venture to say, neither of them produce a dozen bankruptcies in the course of a year, but which, notwithstanding, might yield a very considerable quota of business under an original Equity jurisdiction. Will there, I would ask, be no hardship in dragging the Lancaster people to Manchester, the Chester people to Liverpool, and the York folks to Leeds, and would not this hardship be aggravated by the fact of each of these places having all the while an equally competent tribunal—having their own County Courts close at hand in which such matters might conveniently be decided!

I do not think it can be necessary to give other examples, or longer to detain your Lordship. I think the hardship and inconvenience must be apparent, as must also the inconsistency and absurdity; and I most sincerely hope that when your Lordship comes to apply your mind to these Bills of Lord Brougham's, you will arrive at the conclusion that the scheme propounded in them, is the one that

ought, under the circumstances, to be adopted—that the people, having had the benefit of these County Courts extended to them in matters of Debt, ought now to have the same privileges given them as regards matters in Equity and Bankruptcy; and that, if your Lordship be not prepared at once to give an unlimited original Equity jurisdiction to the County Courts, but think it safer to proceed cautiously and by degrees, you will at least see that jurisdiction to some considerable amount ought to be intrusted to them; and then, if the change should be found to work well, as there is no doubt it would do, the jurisdiction can easily be increased.

That the County Courts, in their present shape, are perfect, or anything like perfect, no one pretends; but that with time, with experience, and with care, they may be made as nearly so as any human institution is capable of becoming, I will continue to hope; and in the meanwhile, the knowledge that the people have shewn so decided and manifest a preference for them, will be sufficient to justify your Lordship in acceding to the propositions now made for the further extension of their jurisdiction.

Humbly apologising for the length at which I have detained your Lordship,

I have the honour to be, My Lord,
Your Lordship's obedient servant,
A Law Reformer.

Lincoln's Inn,
January 22, 1853.